IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4678 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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VITTHALBHAI GOKULBHAI PATEL

Versus

ADMINISTRATOR

Appearance:

1. Special Civil Application No. 4678 of 2002

MR RA PATEL for Petitioner No. 1-64

RULE UNSERVED for Respondent No. 1

MR TUSHAR MEHTA for Respondent No. 2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 13/08/2002

ORAL JUDGEMENT

1. The short facts of the case are that the

petitioners are the members of ONGC Nagar Society situated in Ranip, Ahmedabad. It appears that Ahmedabad District Cooperative Bank Limited filed lavad suit No.2170/1995 before the Registrar's Board of Nominees at Ahmedabad and the said suit was filed against ONGC Nagar Cooperative Housing Society (hereinafter referred as the "Society"). The contention of the petitioners is that the office bearers of the society did not take appropriate steps for defending in the suit. The contention of the petitioners is that since no proper steps were taken by the office bearers of the society, the suit came to be decreed and the award was passed by the learned Nominee on 23-10-1996. It is the case of the petitioners that the loan was taken without any resolution and the loan has been taken from respondent No.2 Bank in the year 1982-83, whereas the suit was filed in the year 1986 and the award came to be passed ex-parte. The case of the petitioners is that when the execution proceedings were initiated for recovery of the amount by the Recovery Officer, the petitioners had filed SCA No.1886/1998 before this Court and this Court had directed the petitioners to make an application for preferring an appeal as third party interested in the matter. The petitioners, therefore, preferred an application for leave to prefer appeal being MCA 32/2001 before the Gujarat State Cooperative Tribunal, Ahmedabad against the award dated 23-10-1996 in lavad case No.2170/1995. The learned Tribunal heard the application No.32/2001 for leave to prefer appeal and passed the order on 22-2-2002, whereby the said application No.32/2001 is dismissed and that order is under challenge in this petition.

2. The contention raised on behalf of the petitioner is that the petitioners are the members of the Housing Cooperative Society, who are directly affected by the outcome of the award and it is the contention of the petitioners that since the award is to be executed against the property which are in occupation of the petitioners as members of the society, they are directly affected by the award of the Nominee and, therefore, being aggrieved parties, they must be allowed to prefer appeal, more particularly when the award is an ex-parte and the office bearers of the society had not taken any proper care to even defend the suit.

3. On behalf of the respondent Bank, Mr.Mehta has supported the order passed by the Tribunal, contending that the members have no individual identity and they can represent their case through the society only and it is submitted that the members have no individual right to

prefer appeal since the privity of contract is between the society and the bank and the execution proceedings will be executed against the property of the society and, therefore, it is submitted that the Tribunal has rightly rejected the application of the petitioners, who are mere members of the society.

4. It may be noted that on behalf of the petitioners as well as on behalf of the respondents more or less similar contentions are raised, which were sought to be canvased in SCA No.10725/2001 in the case of "Sureshbhai Babubhai Sunara Vs. Ahmedabad District Coop. Bank Ltd.", which was also a petition preferred by the members of the Housing Coop. Society against the order of the Tribunal, rejecting the appeal against the ex-parte award, which was passed in favour of Ahmedabad District Coop. Bank Ltd. It is worthwhile to note that this Court in case of "Sureshbhai" (supra) at para 10 of the said judgement has observed as under:

"10. So far as the contention of Vakharia that there is no privity of contract between the bank and the members of the society are concerned, prima facie, it appears that in every cooperative society the members are not the third party to any litigation of the society, more particularly, when it is for the purpose of recovery of amount from the property of the society which is given by the society to its members for utilisation of their leasehold rights or otherwise. The society if remains lethargic or does not defend the rights properly it can not be said that the members have just to act like silent spectators of the functioning of inefficient or dummy office hearers and have to accept or abide by the order though they have remedy to recourse available under law. In a given case, if the organiser or developer for the reasons best known to them or some office bearers of the society for the reasons best known to them may not to prefer appeal against the award of the Nominee, but if the members of the society who are going to be directly affected by the award of the Nominee, if desire, they have right to prefer appeal on the ground that they are directly aggrieved by the award of the Nominee. In a Housing Cooperative Society, when the members have been allowed to occupy the property and on account of some debt outstanding against the society which is to be recovered from the property which is under the occupation of the members, it cannot be said that

> the members are not affected or aggrieved by the award of the Nominee. Under the circumstances, I am of the prima facie view that the members of the society can be said to have been aggrieved by the award of the Nominee for the recovery of the amount from the property of the society which is under occupation of the memebrs concerned."

Since the present case is also, in my view, covered by the decision rendered by this Court in the case of "Sureshbhai" (supra), no further elaborate discussion is necessary.

5. The perusal of the order passed by the Tribunal shows that the Tribunal has proceeded on the basis that the land was distributed to the society and the society was the debtor and the application of the members to prefer appeal on the ground that they are aggrieved by the award of the Nominee cannot be accepted. The said reasons and the other reasons recorded by the Tribunal, in my view, are running counter to the observations made by this Court in the case of "Sureshbhai" (supra) and, therefore, the order of the Tribunal deserves to be quashed and set aside upon the same reasons as they were recorded in the case of "Sureshbhai"(supra).

6. In the result the judgement and order dated 22-2-2002 passed by the Gujarat State Cooperative Tribunal in MCA No.32/2001 is hereby quashed and set aside and the Tribunal is directed to restore the appeal of the petitioners herein preferred by them against the judgement and award dated 23-10-1996 in lavad suit No.2170/1995. The Tribunal is further directed to decide the appeal on merits after giving opportunity of hearing to all the parties concerned as early as possible, preferably within a period of six months from today. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. No costs.

13-8-2002 (Jayant Patel, J.)

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